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IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Writ Petition No.1360 of 2004

PETITIONER: Mahesh Ahuja, son of Shri Mulkraj Ahuja, aged about 46 years, Proprietor M/s Mulkraj Ahuja & Sons, resident of Kelkarpara, Raipur.

Versus

RESPONDENTS:

1. State of Chhattisgarh, Through The Secretary, Ministry of Jail Affairs, D.K.S. Bhawan, Raipur.
2. The Inspector General (Jail) Raipur
3. The Superintendent (Jail) Raipur.
4. The Collector, Raipur.

P. R. No. 1321 Jay
Presented by shri T.P. Sharma
dated 11.5.04

WRIT PETITION UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA FOR THE ISSUANCE OF WRITS IN THE NATURE OF MANDAMUS, CERTORARI AND /OR ORDER(S) AND /OR DIRECTION(S) IN THE NATURE OF WRITS.

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1360 of 2004

Mahesh Ahuja

- Versus -

State of Chhattisgarh and three others

POST FOR ORDER ON 6th SEPTEMBER, 2004

Sd/-
L.C.BHADOO
Judge

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1360 of 2004

Mahesh Ahuja

- Versus -

State of Chhattisgarh and three others

Present: -

Mr. V.G. Tamaskar, Advocate: For the petitioner.

Mr. Sumesh Bajaj, Dy. Govt. Advocate: For the State/respondents.

O R D E R

(Passed on 6th September, 2004)

L.C. BHADOO, J.

By this writ petition filed under Articles 226/227 of the Constitution of India the petitioner has challenged the action of respondent Nos.2 & 3 for not allowing him to participate in the tender process of supply of food and other items to the jail Raipur.

(2) The reliefs sought by the petitioner in this petition are that the respondent/State authorities be directed to produce all the relevant documents showing the consumption and supplies of the food items and other materials to ascertain the fact of violation of human and fundamental rights, a writ in the nature of mandamus be issued for directing the respondent State authorities to allow the petitioner to participate in the process of supply of food items and other material required for the prisoners of Central Jail, Raipur and to direct the Government to appoint an independent agency to enquire into the complaints made by the petitioner against various authorities.

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(3) The petitioner's petition is that he is carrying the business of grain merchant and commission agent in the name and style of M/s Mulkraj Ahuja and Sons with its principal place of business at Kelkarpara, Raipur. The petitioner is supplying various food grains etc. required for the prisoners of Central Jail, Raipur since last several years. For supply of the food items respondents in the first week of each calendar month invite quotations/rates. However, Jail Superintendent Dr. Shyam Rah Singh, Go down in-charge Shri K.L. Deshmukh and D.I.G. P.D. Verma are not allowing the petitioner to participate in the process of supply of food items, as they want that the petitioner should issue bills of more quantity than supplied by him which the petitioner refused, therefore, these officers are against him. Against which the petitioner made complaints to the various authorities. Copies of the complaints are Annexure-P/2. Thereafter, these authorities by sending their persons are threatening him with dire consequences. The jail authorities are purchasing the food items at higher rates against which the petitioner made complaints, copy of the same is Annexure-P/4, and on account of that the petitioner is not being allowed to submit his quotation/rates to the jail authorities. The petitioner was not allowed to participate in the tender process for supply of the food items since June 2004. They are threatening him to black list. Therefore, it is also prayed that the detailed enquiry in the matter be directed.

(4) Return of the same has been filed on behalf of respondents 1 to 4 in which it has been mentioned that instead of filing this writ petition the petitioner ought to have filed an appeal before the competent authority as per Chhattisgarh Jail Purti Niyam, 1968 (hereinafter referred to as Rules, 1968). The respondents are purchasing materials for the jail as per the rules, 1968. Apart from that, they are issuing separate terms and conditions for tender/quotation prepared in accordance with Chhattisgarh Store Purchase Rules, 2002. The petitioner is in the habit of making false and baseless allegations against the State authorities. On enquiry, the allegations of the petitioner have been found false and baseless. The

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petitioner has suppressed material facts relating to his act of not supplying the materials after submitting his quotation and the same being approved. He has also suppressed that he was served with the notice dated 16-3-2004 and had subsequently defaulted in supply of materials. Only after such act of the petitioner, the authorities took action against the petitioner, which is in accordance with the rules prescribed. The petitioner has no right to raise any grievance regarding prisoners. In response to invitation for supply of products dated 2-3-2004, 3-3-2004 and 4-3-2004, the petitioner had submitted his quotation for supply along with other suppliers. The quotations were opened before the Purchase Committee and the suppliers on 8-3-2004, 9-3-2004 and 10-3-2004 respectively. Copy of documents giving details of action taken for opening of quotations along with comparative chart is Annexure-R/3. The Purchase Committee approved the purchases from the supplier, who had quoted the lowest rate for the items. The petitioner was given supply orders dated 9-3-2004 and 13-3-2004. Copy of the same is Annexure-R/4. The petitioner refused to take the supply orders even after repeated efforts. A notice dated 16-3-2004 was affixed on the house of the petitioner giving direction to supply the items on 17-3-2004 by 5.00 am, in case of failure the quotation will be terminated and quotation will be invited again on 18-3-2004, in which the petitioner will not be included. Copy of the notice dated 16-3-2004 is Annexure-R/5.

(5) It is further mentioned in the return that the quotations for the month of April 2004 were also invited where the petitioner had submitted his quotations. The quotations were opened on 1-4-2004 by the Purchase Committee in presence of the suppliers. In pursuance of the notice dated 16-3-2004 it was proposed not to include the quotations of the petitioner and it was decided to be rejected by the committee. After the decision to reject the quotations of the petitioner, the petitioner abused Shri Deshmukh, Assistant Jailor. A complaint was made to the Collector, Raipur, praying for cancellation of licence of the petitioner and to include the name of the petitioner in the black list. Copy of document giving details

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of action taken on 1-4-2004 is Annexure-R/6. The petitioner has not made party to the officers against whom personal allegations have been levelled; therefore, they have no chance to refute the allegations against them. On the complaints of the petitioner an enquiry was instituted and after enquiry, officer on special duty to the Collector, Raipur submitted his report on 14-7-2004. The enquiry officer found the allegations made by the petitioner to be false and baseless. Copy of the same is Annexure-R/8. It is denied that the petitioner was not allowed to submit his quotation and the person guarding the quotation box restrained the petitioner from dropping the quotation. The petitioner had not fulfilled the precondition of depositing the security amount of Rs.20,000/- before submission of quotation vide notice dated 27-4-2004, therefore, being ineligible, the petitioner had not submitted quotation. Therefore, the petition be dismissed.

(6) In the rejoinder, the petitioner has mentioned that he was regularly supplying all the materials. Even the petitioner supplied materials after 16-3-2004. It is incorrect to say that the petitioner had refused to take notice dated 16-3-2004. The order of respondents debarring the petitioner from participating in the tender process and blacklisting has not been served upon him. No chance of hearing and reply has been given to him. Non- deposit of Rs.20,000/- is not correct, in fact, when the petitioner went to deposit the said amount, he was informed that he cannot deposit the said amount which was made a ground to restrain him to participate.

(7) Reply of the rejoinder has been filed on behalf of respondents. They have repeated the same thing which has been mentioned in the return. They have further submitted that the notice (Annexure-R/5) was issued to the petitioner after making due efforts to serve upon him. It was affixed at the gate of his house. The resolution to send proposal to black list the petitioner was taken due to misconduct of the petitioner. Firstly, the

petitioner had willfully defaulted from the supply of materials; secondly he abused the jail authorities on rejection of his quotation.

(8) I have heard learned counsel for the parties.

(9) Learned counsel for the petitioner submitted that in an arbitrary manner respondents are not allowing the petitioner to participate in the tender process for the reason that the petitioner was not able to accede the illegal demands of the authorities. He also submitted that as far as deposit of Rs.20,000/- as security amount is concerned, the petitioner was not allowed to deposit that amount. Notice dated 16-3-2004 was never served upon him and he was never asked for supply of the items. Supplies were made by the petitioner even after 16-3-2004.

(10) On the other hand, learned counsel for respondents submitted that the officers against whom personal allegations have been levelled has not been made party, therefore, they have not been able to refute the allegations levelled against them. An enquiry committee was constituted and the complaints made by the petitioner were enquired into by the officer on special duty of the Collector, Raipur and the same were found false. As the petitioner had not supplied the items, therefore, notice Annexure-R/5 was issued, but the petitioner refused to take the same. Even on telephone the petitioner was informed to supply food items, even then he had not supplied the food items. As far as the question of not allowing him to participate and non-communication of Annexure-R/5 is concerned, it is evident from the minutes of the meeting dated 1-4-2004 in which the petitioner himself participated and everything happened in his presence, so everything came to his notice. Even the petitioner abused one of the officers in the meeting, therefore, a decision was taken not to allow the petitioner to participate in the tender process. It is further submitted that as far as the question of black listing is concerned, the petitioner has not been blacklisted so far and the matter is pending before the Collector, Raipur.

(11) After hearing counsel for the parties, I have perused the relevant records. As far as the question of blacklisting of the petitioner is concerned, as per the arguments advanced by learned counsel for the petitioner and respondents so far the petitioner has not been black listed and the matter is pending before the Collector, therefore, at this stage the petitioner cannot raise any grievance. If he is black listed without giving opportunity of hearing, to explain and submit reply, then he will be at liberty to raise his grievance before the appropriate Forum.

(12) As far as the question of alternative remedy is available to the petitioner that he ought to have filed an appeal before the I.G. (Prisons) is concerned, it is true that he has not filed an appeal before I.G. (Prisons), but as per the allegations in the petition the authorities are biased against him and even he is not allowed to make his point and explain his stand. Therefore, principles of natural justice have been violated. As has been held by the Hon'ble Apex Court in the matter of **Harbanslal Sahnia and another V. Indian Oil Corpn. Ltd. and others** reported in **(2003) 2 SUPREME COURT CASES 107** that 'writ petition under Article 226 is maintainable where the petitioner seeks enforcement of any of the fundamental rights or where there is failure of principles of natural justice'. Since the petitioner has alleged regarding violation of principles of natural justice and also regarding violation of fundamental rights under Article 19 (1)(g), therefore, I am of the opinion that this ground raised by respondents is not maintainable.

(13) Now, coming to the question of not allowing the petitioner to participate in the tender process is concerned, in this regard allegations and counter allegations have been levelled. In Annexure-R/5 dated 16-3-2004 it has been mentioned that the order was sent to the petitioner for supply of the materials on 11-3-2004 by Assistant Jailer Deshmukh, but the petitioner refused to take that order. Thereafter, one jail guard namely Dular Singh Verma of Central Jail, Raipur was sent on 12-2-2004 at 5 pm and 13-3-2004

at 12 pm at the residence of the petitioner, but he refused to take the order. Even he was informed over telephone, but for no reason the petitioner refused to take the order. Thereafter, it was directed to affix the said order on the residence of the petitioner and the same was affixed in which it was mentioned that if the petitioner fails to supply the materials, then his quotation will be cancelled and re-quotation will be issued on 18-3-2004 and the petitioner will not be allowed to participate in the future tender process.

(14) A perusal of the proceedings of the meeting of Purchase Committee dated 1-4-2004 reveals that the petitioner was present in the meeting. During the meeting, Shri K.L. Deshmukh, Assistant Jailor apprised the committee that the petitioner failed to supply the material of the Industry Branch of the Jail, therefore, the petitioner will not be allowed to participate in the tender process. The proposal of Shri Deshmukh was approved by the committee. On this petitioner started abusing Mr. Deshmukh in presence of the committee. It was also considered that the petitioner is in the habit of making false allegations against the committee, therefore, the case be moved before the Collector for cancellation of the licence of the petitioner and blacklisting him. It is evident from the record that the petitioner's tenders/quotations were accepted on 8th March 2004, 9th March 2004 and 10th March 2004 and after accepting tenders, order was sent to the petitioner for supply of the material of the Industry Branch of Jail, but the petitioner refused to take. Even on telephone he was informed about the supply order, but he refused to supply. Then a notice was affixed on the house of the petitioner in which it was categorically mentioned that if he fails to supply the material, then in future he will not be allowed to participate in the tender and quotation process. Same point was raised in the meeting of Purchase Committee dated 1-4-2004 and it was decided not to allow the petitioner to participate in the tender process against which the

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petitioner has not preferred any appeal before I.G. (Prisons) as envisaged in rule 14 of the Rules 1968.

(15) As far as the purchase is concerned, as per Rule 3 of the Rules 1968 respondents are entitled to purchase the materials from reputed and trustworthy suppliers, therefore, it is the satisfaction of the Purchase Committee to decide that who is the reputed and trustworthy firm who can supply the material. Rule 13 of Chhattisgarh Jail Purti Rules 1968 envisages that 'if the tenderer as per the agreement fails to supply material, then Superintendent Jail will immediately intimate the I.G. (Prisons) of this fact and also give intimation in writing to the tenderer in which it will be mentioned that in case the tenderer fails to supply the material, then it will be purchased from the market and if any loss is suffered by the administration, then same will be recovered from the tenderer as a land revenue or from his security. However, in these rules nothing has been prescribed that in case the tenderer fails to supply the material, then in future he will be debarred from participating in the tender process. Counsel for respondents was not able to point out that even in the terms and conditions of the tender notice there was any such condition that in case of non-supply of the material by the tenderer, the administration will be entitled to debar him from participating in the future tender process. Even if the petitioner had failed to supply the material in the Industry Branch of Central Jail, Raipur in response to the order dated 11-3-2004, then as per rule 13 of the Rules 1968 respondents were entitled to purchase the same from the market and in that process if the loss was suffered by the administration, then they were entitled to recover from the security amount deposited by the petitioner and also as land revenue. Even the petitioner has levelled allegation that he was not allowed to deposit Rs.20,000/- as security amount. Since there was no provision in the supply rules 1968 and in the terms and conditions of the tender that if the petitioner will not supply the material, then he will be debarred from participating in the future tender process. In the circumstances, respondents ought to have issued

show cause notice to the petitioner asking him to explain since he has failed to supply the items as per the orders, therefore, why he should not be debarred from participating in the future tender process for supply of material. After receiving the explanation of the petitioner, they should have decided the case and passed appropriate order in the matter. Most specifically when so much allegations levelled by the petitioner against respondents, then they ought to have careful and taken decision after giving reasonable opportunity to the petitioner to explain his conduct before taking decision of debarring the petitioner from participating in the tender process.

(16) Even otherwise, perusal of the records reveals that the petitioner was regularly supplying the material to the Central Jail, Raipur since last more than 4 years. The respondents have admitted this fact that he was regularly supplying the material and there was no complaint in the past about the non-supply of the material, then for failure of the petitioner to supply the material for once, the decision taken by respondents is harsh, arbitrary and irrational and that too without affording the opportunity to the petitioner to explain his conduct. More particularly, when there was provision in rule 13 of the Rules 1968 that respondents were entitled to purchase the items/materials from the market at the market rates and if any loss suffered by respondents, they were entitled to recover from the security deposit made by the petitioner or as land revenue. Therefore, decision of respondents to this extent cannot be said to be correct and in accordance with rules 1968 or as per the terms and conditions of the tender. Even they have not mentioned that on account of non-supply by the petitioner how much loss was suffered by them. On the contrary, they returned the amount of Rs.30,000/- to the petitioner which was pending with respondents.

(17) It is not out of place to mention here that before participating in the tender process, the petitioner is required to fulfill all the terms and

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conditions of the tender, deposit the security amount and follow the rules 1968. The respondents will be at liberty to purchase items after following procedure envisaged in the Supply Rules 1968, Chhattisgarh Store Purchase Rules 2002 and terms and conditions of the tender.

(18) As far as the complaints against respondents are concerned, the committee was also constituted and the committee has already found the complaints of the petitioner false. Therefore, there is no substance in the petition to this extent.

(19) In the result, the petition of the petitioner is partly allowed. The respondents are directed to allow the petitioner to participate in the future tender process, of course, subject to petitioner complies with the terms and conditions of the tender and other orders of respondents which are issued in accordance with Chhattisgarh Jail Purti Niyam, 1968 and Chhattisgarh Store Purchase Rules 2002.

(20) In the facts and circumstances of the case, parties are left to bear their own cost.

Sd/-
L.C.BHADOO
Judge

6-9-2004

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